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Testimony of Martha Ferson
before the Housing Committee
February 26, 2016

RE: Testimony in support of SB 156, An Act Concerning the Data Collection and Analysis of Affordable Housing

Senator Winfield, Representative Butler, and Distinguished Members of the Housing Committee:

Thank you for the opportunity to speak today. My name is Martha Ferson. I am a third-year student at Yale Law School, and I am testifying on behalf of Open Communities Alliance.¹ OCA is a new Connecticut-based civil rights organization that seeks to eliminate the residential segregation of Connecticut families by race and income and promote access to opportunity for all people through education, organizing, advocacy, research, and partnerships.

First and foremost, I would like to state OCA's full support of Senate Bill 156. This bill provides important transparency and modernization by streamlining the process of collecting the housing data Connecticut needs to comply with federal and state law.

The federal Fair Housing Act of 1968² and related state law require Connecticut to affirmatively further fair housing. This means Connecticut must take steps to reduce segregation, increase housing choice, and promote inclusivity and access to opportunity.³ To

¹ Written as part of the Legislative Advocacy Clinic at Yale Law School's Jerome N. Frank Legal Services Organization. Supervised by J.L. Pottenger, Jr., Nathan Baker Clinical Professor of Law, Shelley Geballe, Clinical Lecturer, and Alex Knopp, Clinical Visiting Lecturer.

² 42 U.S.C. §§ 3601-3619.

³ U.S. Department of Housing and Urban Development. *Affirmatively Furthering Fair Housing Rule Guidebook* 5 (2015), available at <https://www.hudexchange.info/resources/documents/AFFH-Rule-Guidebook.pdf> ("For purposes of the AFFH rule, the duty to "affirmatively further fair housing" means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially or ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant's activities and programs relating to housing and urban development. 24 C.F.R. § 5.152. For the purposes of the AFFH rule, "meaningful actions" means significant actions that are designed and can be reasonably expected to



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fulfill this duty, Connecticut needs unit-level information about the current affordable housing programs in the state, the developments receiving public funding, and the demographic characteristics of the current participants in these housing programs.

In the era of big data, the fact that Connecticut lacks this important information is remarkable. Further, failure to collect adequate data on affordable housing programs jeopardizes millions of dollars in federal funding that the state receives each year. On July 16, 2015, the U.S. Department of Housing and Urban Development published a final rule on Affirmatively Furthering Fair Housing (AFFH rule).⁴ The rule requires HUD program participants to report and analyze fair housing data and establish goals for affirmatively furthering fair housing.⁵

In order to remain in compliance with our legal obligations and ensure the continuity of federal funding, it is essential that we collect this comprehensive data.

Of note, the absence of critical housing data persists despite the fact that the Department of Housing and the Connecticut Housing Finance Authority are required to report and analyze housing data under sections 8-37s, 8-37bb, 8-37ff, and 8-37qqq of the general statutes. Two obstacles appear to be preventing the collection of housing data in Connecticut. First, although numerous state agencies either manage or oversee affordable housing initiatives, current state law only requires that data be collected from the Department of Housing and the Connecticut Housing Finance Authority. In order to fulfill their reporting obligations, DOH and CHFA need authority to coordinate with the various agencies administering housing initiatives. Second, precisely identifying the information DOH and CHFA need is challenging because the state reporting and analysis obligations are listed in various sections of the general statutes and each of these obligations requires collecting different types of information. To resolve the challenge posed by this statutory complexity, DOH needs a single, comprehensive list of the information it must collect.

SB-156 would address these two challenges by amending CGS Sec. 8-37s, a statute that currently requires the Commissioner of DOH to collect and monitor data on housing need, to simplify and streamline the process for collecting the data Connecticut requires to meet its federal and state obligations. SB 156 simplifies the task of identifying the various types of information DOH needs to meet its various state and federal obligations by providing a single, comprehensive list of the data DOH must collect. The proposal streamlines the data

achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity. 24 C.F.R. § 5.152.”).

⁴ The AFFH rule is published at 80 Fed. Reg. 42,272 and codified at 24 CFR Part 5, along with conforming amendments to Parts 91, 570, and 903. The effective date of the AFFH rule is August 17, 2015.

⁵ U.S. Department of Housing and Urban Development. *Affirmatively Furthering Fair Housing Rule Guidebook* at 5-8.



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collection process by ensuring that DOH and CHFA can collect this data from the various agencies administering housing programs. To facilitate cooperation among the agencies, the proposal requires the Interagency Council on Affordable Housing to reconvene for the purpose of developing a procedure for collecting the relevant data by December 31, 2016. The proposal requires DOH, by June 30, 2017, to promulgate regulations detailing and updating its system for collecting the data it is required to compile by state and federal statutes.

Open Communities Alliance also recognizes that the approach proposed to this Committee by Raphael Podolsky of the Legal Aid Resource Center of Connecticut would ensure that Connecticut has essential housing data, and Open Communities Alliance endorses this approach. The proposal raised in Mr. Podolsky's testimony, rather than requiring DOH to promulgate regulations setting forth a data collection procedure, would simply require DOH to directly report the elements of housing data listed in SB 156 to the Legislature each year by a date certain.

The story of Westchester County, NY illustrates the consequences of a government's failing to adhere to Fair Housing Act obligations. In 2009, Westchester settled a lawsuit under the False Claims Act for \$62.5 million—including \$10 million to plaintiffs—after falsely certifying to the federal government that it was affirmatively furthering fair housing. Making this certification to the federal government is a requirement for receiving program funds. Indeed, Connecticut also makes this certification.

Significantly, the complaint against Westchester cited its failure to conduct an adequate analysis of fair housing impediments – a key component of which was gathering and analyzing where publicly-funded housing was located, who was residing in it, and barriers to affirmatively further fair housing - and take steps to overcome these impediments. As part of the settlement, Westchester entered into a consent decree giving the federal government supervision over the county's zoning and housing practices that continues to this day.

While Westchester's failures weren't limited to data collection, the consent decree requires the county to undertake better data collection practices going forward. Similar litigation, with similar results, occurred in Marin County, California, and Houston, Texas.

Current housing trends demonstrate the significant challenges Connecticut faces in its efforts to fulfill the federal obligation to affirmatively further fair housing. Last month, a Brookings Institute study identified many of Connecticut's cities as having among the highest inequality gaps in America.⁶ In fact, the evidence has suggested for quite some time now that the residential segregation of families by income is rising more rapidly in

⁶ Alan Berube and Natalie Holmes, City and Metropolitan Inequality on the Rise, Brookings Institute, (January 14, 2016), *available at* <http://brookings.edu/research/papers/2016/01/14-income-inequality-cities-update-berube-holmes>.



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Connecticut than other states. For instance, a 2011 study detailed that in the New Haven area the proportion of families living in either “poor” or “affluent” neighborhoods (and not middle income neighborhoods) rose from 6.4 percent in 1970 to 30.5 percent in 2007—one of the most rapid increases in income segregation in the nation.⁷ To effectively address these challenges and to document and assess Connecticut’s progress towards reducing segregation, increasing housing choice, and promoting access to opportunity requires modernizing Connecticut’s process for collecting housing data.

SB 156 is an important step towards streamlining and modernizing the collection of the housing data that ensures that Connecticut has the data it needs to fulfill its federal duty to affirmatively furthering fair housing.

⁷ Sean Rirdon and Kendra Bischoff, Growth in the Residential Segregation of Families by Income, 1970-2009, US2010 Project, (November 2011).